

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**DESMOND GARMON, ZELL HATHORNE,
LEWIS HOBBY, JR., ULTRA COBBIN,
BENNIE REED, RHANAE GREER, SUNSHINE
SMITH, ANTWON CHERRY, ADELOA
RACAL OLUTAYO and CHARISSE
LANGSTON,**

Plaintiffs,

vs.

**RALPHS GROCERY COMPANY, d/b/a FOOD 4
LESS MIDWEST, and THE KROGER CO.,**

Defendants.

Case No. 1:23-cv-15345

Hon. Steven C. Seeger

DEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants, Ralphs Grocery Company d/b/a Food 4 Less Midwest, and The Kroger Co., respectfully move to dismiss Plaintiffs' Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6). In support thereof, and in addition to their arguments contained in Defendants' Memorandum of Law filed contemporaneously with this Motion, Defendants state as follows:

1. Plaintiffs filed this action alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* on October 26, 2023. Pls.' Compl., ECF #1.

2. At the same time, and as referenced in the Complaint, there is a parallel action brought by a putative class against Defendants in *Maeteen Johnson v. Ralphs Grocery Company d/b/a Food 4 Less Midwest, and The Kroger Co.* (Case No. 1:22-cv-02409), pending in this District before Judge Alonso. *See* Pls.' Compl., at n.5.

3. Plaintiffs in this case are putative class members of the parallel *Johnson* litigation, and the defendants in both cases are the same. *Compare Johnson* Complaint, attached as Exhibit 1, with Pls.' Compl.

4. The issues in *Johnson* are exactly the same: whether employees in Illinois can recover from Defendants for alleged BIPA violations arising from their use of timeclocks while working for Food 4 Less stores within the statutory period.

5. Litigating this case and *Johnson* at the same time, before two different judges in the same district, would waste judicial resources and potentially render conflicting rulings.

6. To the extent Plaintiffs claim that the instant action is comprised of individuals that intend to opt-out of the class in *Johnson*, no class has yet been certified, and it would be inappropriate to litigate this action with the possibility that the ten plaintiffs here ultimately fail to opt-out, should a class be certified.

7. The instant action is duplicative of the *Johnson* litigation, which was filed first, and therefore Plaintiffs' Complaint should be dismissed.

8. Alternatively, should this Court deem dismissal inappropriate, Defendants request that the instant action be stayed until the *Johnson* litigation is resolved.

WHEREFORE, Defendants, Ralphs Grocery Company d/b/a Food 4 Less Midwest, and The Kroger Co., respectfully request that this Court dismiss Plaintiffs' Complaint.

Date: November 17, 2023

Respectfully submitted,

By: /s/Diane Webster

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